

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**Joint Agenda and Report for
February 16, 2017 Status Conference**

Pursuant to Pretrial Order #3, undersigned Counsel submit this Joint Agenda and Status Conference Report for the February 16, 2017, 9:30 a.m. Status Conference:

1. Pretrial Orders

No new pretrial orders have issued since the January Status Conference.

2. Plaintiff Fact Sheets (“PFSs”)

The parties reached agreement on the form PFS and the proposed order governing the form and services of PFSs. On September 27, 2016, the Court entered PTO #14: Plaintiff Fact Sheet and Service Protocol. For all cases on file in MDL 2666 on September 27, 2016, a completed PFS was due no later than December 26, 2016. On December 21, 2016 the Court entered PTO #16: Plaintiff Fact Sheet Service Order. Most PFS submissions are being uploaded to a secure FTP hosted by Elijah and deficiency notices are being served electronically upon co-lead counsel within four weeks of receipt of a PFS.

Plaintiffs have been submitting PFSs and Defendants have been reviewing them. For those PFSs that Defendants contend contain “core deficiencies,” Defendants have sent deficiency notices to Plaintiffs in the manner prescribed by PTO #14, and Plaintiffs have been responding to those deficiency notices. In addition, extensive meet-and-confer correspondence and phone calls have occurred between Defendants’ counsel and individual plaintiff’s counsel regarding PFSs. There remain some cases where a PFS was due and no PFS has been submitted. Defendants and Plaintiffs’ counsel have been meeting and conferring on these issues. Defendants intend to begin raising with the Court at the March Status Conference those cases where uncured “core deficiencies” remain, as provided by PTO #14, and anticipate separately requesting relief from the Court on those cases where PFSs are significantly overdue and no extension has been agreed to.

3. Bellwether Selection Plan

PTO #17 details the bellwether trial selection process. On January 9, the parties submitted their joint and also separate proposals, of the relevant characteristics and categories to be considered in assessing whether a case is representative of the range of cases in this action. At the January Status Conference, the Court determined that the initial bellwether cases shall be selected from the following categories: (1) cases where the plaintiff underwent a total hip implant procedure; and (2) cases where the plaintiff underwent a total knee implant procedure.

On January 5, 2016 the Court randomly selected 150 cases from the bellwether pool that includes case filed in, removed to, or transferred to this MDL on or before

December 19, 2016. On February 2, 2017, the parties each submitted their list of 16 nominated bellwether cases to the Court. The parties did not share their respective lists with one another due to Defendants' contention that there remain outstanding and unresolved *Lexecon* issues. On February 7, 2016, the Court provided guidance to the parties on how to resolve Defendants' assertions concerning *Lexecon* issues. Plaintiffs have requested *Lexecon* waivers from all plaintiffs who are among the 150 randomly-selected cases, and will provide all plaintiffs' responses, as required by the Court, on or before February 28, 2017.

4. Update on number and status of cases transferred into the MDL

As of Friday, February 3, 2017, there were 1,227 active federal Bair Hugger cases pending in this MDL. Not all of these filed cases have been served on Defendants.

Update on cases filed in the City of St. Louis, Missouri

Two cases are pending transfer to this MDL from the Eastern District of Missouri, *Jennings, et al. v. 3M & Arizant Healthcare, Inc.*, 4:17-cv-0012 (Autrey, J.), and *Weisbrod et al. v. 3M and Arizant Healthcare, Inc.*, 4:17-cv-0023 (Hamilton, J.). *Jennings* and *Weisbrod* were both removed by 3M from the City of St. Louis, Missouri state court. *Jennings* joins the Bair Hugger claims of 52 plaintiffs, only one of whom is from Minnesota. *Weisbrod* joins the Bair Hugger claims of 58 plaintiffs, only three of whom are from Minnesota. Defendants removed alleging improper joinder of the non-Missouri plaintiffs, including the plaintiffs from Minnesota. Defendants contemporaneously filed motions to dismiss for lack of personal jurisdiction over the non-Missouri Plaintiffs pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure,

or in the alternative, to sever the multi-plaintiff lawsuit for improper joinder under Rules 20 and 21, along with motions to stay in the E.D. Mo. so that the pending motion to dismiss or to sever can be decided by this Court. Plaintiffs in both cases, represented by The Simon Law Firm, P.C., have moved to remand to state court. On January 6, Defendants filed a Notice of Potential Tag-Along Actions with the JPML for the two matters. On January 10, 2017, the JPML entered its conditional transfer order. On February 1, 2016 the *Jennings* and *Weisbrod* plaintiffs filed with the JPML a Motion to Vacate its Conditional Transfer Order. Defendants have until February 22, 2017 to respond. On February 7, the *Jennings* court granted 3M's motion to stay all proceedings pending transfer of the case to the MDL. The *Weisbrod* court has not yet acted on 3M's motion to stay.

5. Overview of related state court proceedings

There are 46 cases pending before Judge Leary in Ramsey County. Judge Leary has indicated that he intends to coordinate the Ramsey County cases with this MDL. He has set a status conference to run concurrently with next Thursday's MDL status conference. The parties will reach out to Judge Leary to determine if he wishes to conduct the status conference at the U.S. Courthouse in Minneapolis or means to conduct it separately in St. Paul.

This Court has ordered that the Ramsey County cases are to be included within the bellwether selection process. On December 29, 2016, the Ramsey County Court entered a PFS order for Ramsey Cases. For all Ramsey cases pending as of the date of the Order, a completed PFS was due no later than January 31, 2017. The parties will each designate

up to 2 Ramsey County cases (as set out in paragraph 12.c. of PTO #17) no later than February 13, 2017. Defendants are meeting-and-conferring with Plaintiffs' counsel concerning overdue plaintiff fact sheets and may seek relief from Judge Leary in the coming weeks if any remain overdue without an agreed extension.

There are currently four state court cases pending outside of Ramsey County, Minnesota:

- *Rodriguez v. 3M Co., Arizant Healthcare, Advocate Health and Hospitals Corporation, and Medtronic Sofamor Danek U.S.A., Inc.*, pending in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Case No. 15-L-930, before the Honorable Thomas J. Schippers. Plaintiffs are represented by DeSanto Morgan & Taylor. The *Rodriguez* case was filed on December 31, 2015 and 3M and Arizant were served on January 14, 2016. At the November 30, 2016 case management conference, the Court tentatively set a trial date of March 5, 2018 with the aim of trailing the first MDL bellwether trial. No discovery schedule has been set; another case management conference has been set for February 22, 2017 to set a schedule. Defendants intend to seek a further continuance of the trial date in light of the adjustment to the MDL bellwether trial date.
- *Lawson v. 3M Co., Arizant Healthcare, Inc., CHCA Conroe L.P., Conroe Hospital Corporation, Conroe Regional Medical Center, and Haissam Elzaim, M.D.*, pending in the 284th Judicial District Court, Montgomery County, Texas, before the Honorable Cara Wood. Plaintiffs are represented by the Hopkins Law Firm.

The *Lawson* case was filed on October 7, 2015. 3M was served on October 28, 2015 and Arizant was served on November 13, 2015. A status conference is set for November 19, 2017, at which time a trial date will be set. The *Lawson* judge selected the November 2017 date in order to see whether the first MDL bellwether case had proceeded to trial as had been scheduled. The deposition of one of the plaintiffs and the defendant treating physician occurred in September 2016. The deposition of the other plaintiff, the defendant hospital, and 3M's sales representative are not yet scheduled.

- *Acosta v. 3M and Arizant Healthcare, Inc.*, pending in the Fourth Judicial District Court, Missoula County, Montana, Case No. DV-16-769, Dept. No. 4, Plaintiffs are represented by the Rossbach Law Firm. The *Acosta* case was filed on September 9, 2016. 3M and Arizant have not yet been served.
- *Petitta v. Ray R. Trey Fulp III et al.*, pending in the District Court of Hidalgo County, Texas. Plaintiff is represented by the Garcia & Martinez Law Firm. The *Petitta* case was filed on November 14, 2016. This case was duplicative (same plaintiff, same allegations against 3M) of a case previously filed in the MDL (Case No. 16-cv-03878). 3M was served on November 18, 2016. Plaintiffs' counsel has advised 3M that the state court action will proceed. Defendants responded to the complaint on January 20, 2016. On February 2, 2017, plaintiffs served discovery on all defendants.

6. Overview of Canadian Action

On June 22, 2016, Defendants were served with a Canadian putative class action, *Driessen v. 3M Canada Company, 3M Company, and Arizant Healthcare Inc.*, filed in Ontario Superior Court of Justice, Court File No. 16-69039. Plaintiff *Driessen* seeks to represent a putative class of “[a]ll persons residing in Canada who had the 3M Bair Hugger Forced-Air Warming Device used on them during surgery.” (*Driessen* Cplt. at ¶ 4.) Plaintiff *Driessen* is represented by Jeff Orenstein and Andrea Grass of the Consumer Law Group Professional Corporation in Ottawa, Ontario. Defendants have retained Canadian counsel, Tim Buckley and Kate Crawford of Borden Ladner Gervais. On August 8, 2016, Defendants filed their Notice of Intent to Defend. On October 24, 2016 the plaintiff’s counsel requested a judge assignment and case conference. There has been no additional case activity since the time of the last Joint Status Report.

7. Additional pretrial orders (including, but not limited to, rules and procedures, preservation order, and protective order of confidentiality)

There are no additional pretrial orders pending and the parties do not request entry of any additional pretrial orders at this time.

8. Status of Discovery

Augustine. Judge Noel heard argument on Defendants’ Motion to Compel the Production of Documents on Augustine’s Privilege Log on February 7, and has taken the motion under advisement. On February 9, Kennedy Hodges provided its retention agreement with Augustine to counsel for Defendants, as directed by the Court. Dr. Augustine’s deposition has been rescheduled for March 10, 2017. Defendants anticipate

further motion practice concerning Dr. Augustine's compliance with the Court's November 23 order concerning Augustine's document production.

VitaHEAT Third-Party Subpoena. On February 9, Plaintiffs filed a motion requesting that the Court overrule the relevancy objections of third-party VitaHEAT Medical, LLC to Plaintiffs' subpoena. That motion is set to be heard by Judge Noel on February 27 at 11 a.m.

Completion of Defendants' email production. Defendants report that they completed their production of email on February 1. Defendants anticipate that they may make additional supplemental productions in February of documents presently coded as privileged that are determined, upon further review, to be non-privileged in the course of preparing the privilege logs required by PTO # 11. Plaintiffs state that they reserve the right to serve new discovery requests based on any new/late productions.

Deposition update. Plaintiffs have requested depositions of current or former employees and/or consultants of the Defendants, which have been completed or scheduled as follows:

- Gary Hansen, completed November 2;
- John Rock, completed November 4;
- Al Van Duren, completed November 7;
- Troy Bergstrom, completed November 18;
- Caroline Johnson, completed November 30;
- Teri Woodwick-Sides, completed December 8;

- Jana Stender, completed December 9;
- David Westlin, completed December 16;
- Dr. Michelle Hulse-Stevens, completed December 19;
- Dr. Daniel Sessler, completed January 11;
- Dr. Andrea Kurz, completed January 12;
- Gary Maharaj, completed January 18;
- Jay Issa, completed February 8;
- Karl Zgoda, noticed for February 24;
- Ryan Barrows, noticed for February 28;
- Mark Scott, noticed for March 2;
- Hamid Ziaimehr, noticed for March 3;
- 3M's Rule 30(b)(6) Representative(s), noticed for March 6 and 7;
- Winston Tan, noticed for March 10;
- Scott Augustine, noticed for March 10;
- Bob Buehler, noticed for March 17.

Defendants are still working to confirm dates for the corporate designee on regulatory topics included in Plaintiffs' Rule 30(b)(6) notice, and will work with Plaintiffs' counsel to find a mutually agreeable date prior to March 20, 2017. Plaintiffs state that they have requested and require this date as soon as possible and will seek Court involvement if this cannot be resolved before the February status conference.

In addition to the UK study author depositions that have been completed, Defendants have conducted the following U.S. study author depositions:

- Dr. Kumar Belani, completed September 7;
- Mark Litchy, completed September 28;
- Dr. Robert Gauthier, day 1 completed October 4 and day 2 completed December 15;
- Defendants deposed Mark Albrecht on October 7 and November 12. Plaintiffs plan to notice Mr. Albrecht's deposition as well (if they do so, Defendants may also seek additional time with Mr. Albrecht to complete their examination); and
- Christopher Nachtsheim, completed November 29.

Dated: February 10, 2017

Respectfully submitted,

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